

**UNPUBLISHED**

UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT

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**No. 02-7093**

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UNITED STATES OF AMERICA,

Plaintiff - Appellee,

versus

FRANKIE BARBARA DELISE,

Defendant - Appellant.

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Appeal from the United States District Court for the Eastern District of Virginia, at Norfolk. Rebecca B. Smith, District Judge. (CR-99-16)

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Submitted: October 24, 2002

Decided: October 31, 2002

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Before WIDENER, MICHAEL, and MOTZ, Circuit Judges.

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Dismissed by unpublished per curiam opinion.

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Frankie Barbara Delise, Appellant Pro Se. Kevin Michael Comstock, OFFICE OF THE UNITED STATES ATTORNEY, Norfolk, Virginia, for Appellee.

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Unpublished opinions are not binding precedent in this circuit. See Local Rule 36(c).

PER CURIAM:

Frankie Barbara Delise seeks to appeal the district court's order denying her 28 U.S.C. § 2241 (2000) petition that the court properly construed as a motion filed under 28 U.S.C. § 2255 (2000). We have reviewed the record and the district court's opinion and conclude for the reasons stated by the district court that Delise has not made a substantial showing of the denial of a constitutional right. See United States v. Delise, No. CR-99-16 (E.D. Va. filed May 17, 2002; entered May 24, 2002). Accordingly, we deny a certificate of appealability and grant the Government's motion to dismiss the appeal. See 28 U.S.C. § 2253(c) (2000).<sup>\*</sup> We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before the court and argument would not aid the decisional process.

DISMISSED

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<sup>\*</sup> Because Delise has previously filed her first § 2255 motion, we conclude there was no error in the court's not providing notice under United States v. Emmanuel, 288 F.3d 644, 649-50 (4th Cir. 2002), of its intent to construe the motion as one under § 2255.